

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

| | | |
|--------------------------|---|------------------------|
| JERRY EUGENE DEATHERAGE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. CIV-05-0091-F |
| |) | |
| STEVEN STICE, et al., |) | |
| |) | |
| Defendants. |) | |

ORDER

Plaintiff, a state prisoner appearing pro se, brings this action pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights.

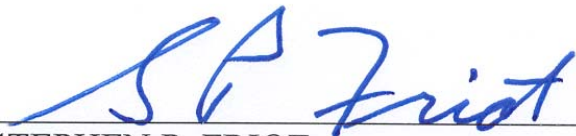
On December 29, 2005, Magistrate Judge Doyle W. Argo entered a Report and Recommendation (doc. no. 25) in which he determined that under the rule of Heck v. Humphrey, 512 U.S. 477 (1994), it would be premature to address the only remaining claim in this action, which is plaintiff's Count II claim alleged against the Oklahoma Indigent Defense System under the Americans With Disabilities Act. Based on the Heck doctrine, which the Magistrate Judge raised *sua sponte* as a doctrine closely resembling a jurisdictional barrier, the Magistrate Judge declined to rule on the Oklahoma Indigent Defense System's motion for summary judgment. (Motion at doc. no. 24). Instead, the Magistrate Judge recommended that this action be dismissed without prejudice under Heck, until such time as plaintiff's criminal convictions have been overturned or otherwise invalidated.

The Report and Recommendation advised the parties of their right to object to the Report and Recommendation, advised that any such objections must be filed by January 18, 2006, and advised that failure to make timely objection waives the right to appellate review of both factual and legal issues contained in the Report and

Recommendation. No party has filed an objection to the Report, and no party has asked for an extension of time within which to object.

With no objection having been filed, and having reviewed the Report and Recommendation, the record, and the relevant authorities, the court determines that no purpose would be served by restating the Magistrate Judge's conclusions or by offering any further analysis here. Accordingly, the court **AFFIRMS, ACCEPTS, and ADOPTS** the Report and Recommendation in its entirety, and this action is hereby **DISMISSED** without prejudice. The Oklahoma Indigent Defense Systems' Motion for Summary Judgment (doc. no. 24) is **STRICKEN** as moot.

Dated this 1st day of February, 2006.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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